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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,207	02/17/2004	Peter Szor	SYMC1048	1938
34350 7590 07/02/2007 GUNNISON, MCKAY & HODGSON, L.L.P. 1900 GARDEN ROAD, SUITE 220 MONTEREY, CA 93940			EXAMINER NGUYEN, VAN H	
			ART UNIT 2194	PAPER NUMBER
			MAIL DATE 07/02/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/781,207	<b>Applicant(s)</b> SZOR, PETER	
	<b>Examiner</b> VAN H. NGUYEN	<b>Art Unit</b> 2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02/17/2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>05/29/07</u> | 6) <input type="checkbox"/> Other: _____  |

05/29/07  
04/23/07  
12/11/06  
08/04/06  
05/27/04

## **DETAILED ACTION**

1. This communication is responsive to the application filed 02/14/2007.

Claims 1-21 are currently pending in this application.

Examiner requests that Applicant review the application carefully for informalities including typographical errors.

## **Oath/Declaration**

2. The Office acknowledges receipt of a properly signed Oath/Declaration submitted 02/17/2004.

## **Double Patenting**

3. The nonstatutory double patenting; rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. CIT. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645

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(Fed. Cir. 1985); In re van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Uogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 C.F.R.' 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R.' 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 1-21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Pat. No. 7, 228, 563.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application and the claims of patent'563 are claiming common subject matter, if not identical subject matter.

### **Claim Rejections - 35 USC § 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by **Swimmer et al.** (pub. No.: US 2004/0255163 A1).

**As to claim 1:**

Swimmer teaches a method comprising: stalling a call to an operating system function originating from a call module; and determining whether said call module is in a driver area of a kernel address space of a memory (see the Abstract; ¶¶0015-0033; 0041-0078; see also, Figs. 2-5 and the associated text).

**As to claim 2:**

Swimmer teaches determining that said call module is not in said driver area during said determining (see Figs. 2-5 and the associated text).

**As to claim 3:**

Swimmer teaches taking protective action to protect a computer system (see Figs. 2-5 and the associated text).

**As to claim 4:**

Swimmer teaches providing a notification that said protective action has been taken (see Figs. 2-5 and the associated text).

**As to claim 5:**

Swimmer teaches terminating said call (see ¶¶ 0041-0078).

**As to claim 6:**

Swimmer teaches terminating a parent application comprising said call module (see ¶¶ 0041-0078).

**As to claim 7:**

Swimmer teaches determining whether said call module is a known false positive module (see Fig. 2 and the associated text).

**As to claim 8:**

Swimmer teaches determining that said call module is in said driver area during said determining module (see Figs. 2-5 and the associated text).

**As to claim 9:**

Swimmer teaches stalling said call (see Figs. 2-5 and the associated text).

**As to claim 10:**

Swimmer teaches determining that said call module is in said driver area during said determining; and allowing said call to proceed (see Figs. 2-5 and the associated text).

**As to claim 11:**

Swimmer teaches determining a location of said call module in said kernel address space of said memory (see Figs. 2-5 and the associated text).

**As to claim 12:**

Swimmer teaches determining if a last mode of operation is a kernel mode (see ¶¶ 0041-0078).

**As to claim 13:**

Swimmer teaches disabling loading and unloading of drivers into said kernel address space (see ¶¶ 0041-0078).

**As to claim 14:**

Swimmer teaches subsequent to said determining whether said call module is in a driver area of a kernel address space of a memory, enabling loading and unloading of said drivers into said kernel address space (see Figs. 2-5 and the associated text).

**As to claim 15:**

Swimmer teaches said driver area is static (see ¶¶ 0041-0078).

**As to claim 16:**

Swimmer teaches said driver area is dynamic (see ¶¶ 0041-0078).

**As to claim 17:**

Swimmer teaches keeping said driver area updated as drivers are loaded and unloaded from said kernel address space (see ¶¶ 0041-0078).

**As to claim 18:**

Swimmer teaches hooking driver load and unload functions; obtaining loaded driver information; determining a driver area in a kernel address space of a memory; and determining whether a driver has been loaded into or unloaded from said kernel address space, wherein upon a determination that said driver has been loaded into or unloaded from said kernel address space, said method further comprising updating said driver area (see the Abstract; ¶¶0015-0033; 0041-0078; see also, Figs. 2-5 and the associated text).

**As to claim 19:**

Swimmer teaches stalling a call to an operating system function originating from a call module; and determining whether said call module is in said driver area (see ¶¶ 0041-0078).

**As to claim 20:**

Swimmer teaches said driver area is dynamic (see ¶¶ 0041-0078).

**As to claim 21:**

Swimmer teaches a computer-program product comprising a computer readable medium containing computer code comprising: a malicious code blocking application for stalling a call to an operating system function originating from a call module; and said malicious code blocking application further for determining whether said call module is in a driver

area of a kernel address space of a memory (see the Abstract; ¶¶ 0015-0033; 0041-0078; see also, Figs. 2-5 and the associated text).

### **Conclusion**

5. The prior art made of record, see PTO 892, and not relied upon is considered pertinent to applicant's disclosure. Applicant should review these references carefully before responding to this office action.

### **Contact Information**

6. Any inquiry or a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN H. NGUYEN whose telephone number is (571) 272-3765. The examiner can normally be reached on Monday-Thursday from 8:30AM-6:00PM. The examiner can also be reached on alternative Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WILLIAM THOMSON can be reached at (571) 272-3718.

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The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://padirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Any response to this action should be mailed to:**  
Commissioner for patents  
P O Box 1450  
Alexandria, VA 22313-1450

  
**VAN H. NGUYEN**  
PRIMARY EXAMINER